

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Andrea Laverne Turner  
SSN XXX-XX-1160

**CHAPTER 13 CASE**

**CASE NO. 03-30345 GFK**

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. GMAC Mortgage Corporation (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 20, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than September 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on January 16, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$144,756.00, as evidenced by that certain Promissory Note dated February 28, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated February 28, 2001, executed by Andrea L. Turner, a single person, recorded on April 30, 2001, as Document No. 3387628, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

Lot 10, Block 2, Arlington Hills Addition to St. Paul, Ramsey County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 3, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of May, 2004 through September, 2004, inclusive, in the amount of \$1,144.56 each; accruing late charges of \$183.12 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$149,000.00 subject to Secured Creditor's mortgage in excess of \$147,712.61.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor

to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 3rd day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

**NOTE**

FHA Case No.

271-8435825

Multistate

LOAN NO. 2000025732

FEBRUARY 28  
(Date)

2001

742 MAGNOLIA AVENUE EAST  
ST. PAUL, MN 55106  
[Property Address]

MAR 08 2001

**1. PARTIES**

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means

PRIME MORTGAGE CORPORATION

A MINNESOTA CORPORATION

and its successors and assigns.

**2. BORROWER'S PROMISE TO PAY; INTEREST**

In return for a loan received from Lender, Borrower promises to pay the principal sum of

ONE HUNDRED FORTY-FOUR THOUSAND SEVEN HUNDRED

FIFTY-SIX AND 00/100

Dollars (U.S. \$144,756.00 ✓)

), plus interest, to the order of Lender. Interest will be charged on unpaid principal,

from the date of disbursement of the loan proceeds by Lender, at the rate of SEVEN

percent ( 7.000 ✓ %) per year until the full amount of principal has been paid.

**3. PROMISE TO PAY SECURED**

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

**4. MANNER OF PAYMENT****(A) Time**

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on

APRIL 1, 2001 ✓. Any principal and interest remaining on the first day of MARCH 1 ✓

2031, will be due on that date, which is called the "Maturity Date."

**(B) Place**

Payment shall be made at 435 FORD ROAD, SUITE #120, MINNEAPOLIS, MN 55426

or at such place as Lender may designate in writing

by notice to Borrower.

**(C) Amount**

Each monthly payment of principal and interest will be in the amount of U.S. \$ 963.07 ✓. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

**(D) Allonge to this Note for payment adjustments**

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

**5. BORROWER'S RIGHT TO PREPAY**

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

FHA Multistate Fixed Rate Note - 10/95

**EXHIBIT**

0900  
19.50  
PCH307154450  
DOC# 3387628Certified Recorded On  
APR. 30, 2001 AT 02:15PMSigned: DW  
OFFICE CO RECORDER  
RAMSEY COUNTY MN

Fee Amount: \$19.50



GMAC53

2000025732

(Space Above This Line For Recording Data)

LOAN NO. 2000025732

**MORTGAGE**FHA Case No.  
271-8435825THIS MORTGAGE ("Security Instrument") is given on FEBRUARY 28, 2001. The mortgagor is ANDREA L. TURNER, A SINGLE PERSONwhose address is 505 HARRIET AVENUE #1402  
SHOREVIEW, MN 55126

("Borrower").

This Security Instrument is given to PRIME MORTGAGE CORPORATION  
A MINNESOTA CORPORATIONwhich is organized and existing under the laws of THE STATE OF MINNESOTA, and whose address is 435 FORD ROAD #120  
MINNEAPOLIS, MN 55426

("Lender").

Borrower owes Lender the principal sum of  
ONE HUNDRED FORTY-FOUR THOUSAND SEVEN HUNDRED FIFTY-SIX AND 00/100Dollars (U.S. \$ 144,756.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on MARCH 1, 2031.This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with the power of sale, the following described property located in RAMSEY County, Minnesota:LOT 10, BLOCK 2, ARLINGTON HILLS ADDITION TO ST. PAUL, RAMSEY COUNTY, MINNESOTA.**RETURN TO**When Recorded... Return To:  
Homestead Escrow  
2929 N. McKnight Road  
Maplewood, MN 55109

4925 002

E. STAMPS

04/30/01

1:21

3.00

4925 902

NTG TAX

04/30/01

1:21

3.00

MINNESOTA - Single Family - FHA Security Instrument  
Form 94124 1/98  
Lender Forms Inc. (800) 446-3555  
LFI #FHA94124 3/96

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Initials: ATZ

1067

**EXHIBIT B**

DOC# 3387628

which has the address of 742 MAGNOLIA AVENUE EAST

ST. PAUL

Minnesota 55106

("Property Address");

(Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds".

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

MINNESOTA - Single Family - FHA Security Instrument  
Form 94124 1/98

Laser Forms Inc. (800) 446-3556  
LFI #FHA94124 3/98

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Initials: ASJ

2

DOC# 3387628

Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es)).

- ☐ Condominium Rider ☐ Growing Equity Rider  
☐ Graduated Payment Rider ☐ Planned Unit Development Rider  
☐ Other [specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)  
 ANDREA L. TURNER -Borrower  
 \_\_\_\_\_ (Seal)  
 \_\_\_\_\_ -Borrower  
 \_\_\_\_\_ (Seal)  
 \_\_\_\_\_ -Borrower  
 \_\_\_\_\_ (Seal)  
 \_\_\_\_\_ -Borrower

(Space Below This Line For Acknowledgment)

STATE OF MINNESOTA,

*Rainey* County as:

On this 28TH day of FEBRUARY, 2001  
 ANDREA L. TURNER, A SINGLE PERSON

, before me appeared

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that SHE executed the same as free act and deed.

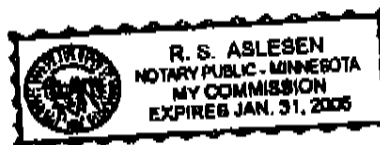
\_\_\_\_\_  
 \_\_\_\_\_ - Notary Public

My Commission expires:

This instrument was prepared by  
 of MINNEAPOLIS

PRIME MORTGAGE CORPORATION  
 , Minnesota

435 Ford Rd  
 55426



MINNESOTA - Single Family - FHA Security Instrument  
 Form 84124 1/98  
 Laser Forms Inc. (800) 446-3655  
 UFT #FHAB4124 3/98

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Andrea Laverne Turner  
SSN XXX-XX-1160

**CHAPTER 13 CASE**

**CASE NO. 03-30345 GFK**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 3, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of May, 2004 through September, 2004, in the amount of \$1,144.56 each; accruing late charges of \$183.12 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE



PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$149,000.00 subject to Secured Creditor's mortgage in excess of \$147,712.61.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

**CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 3rd day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

**CHAPTER 13 CASE**

**CASE NO. 03-30345 GFK**

Andrea Laverne Turner  
SSN XXX-XX-1160

**AFFIDAVIT OF  
FELICIA ROBY**

Debtor.

Felicia Roby, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of GMAC Mortgage Corporation.
2. GMAC Mortgage Corporation, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated February 28, 2001, executed by Andrea L. Turner, a single person, recorded April 30, 2001, as Document No. 3387628. The property is located in Ramsey County, Minnesota and is legally described as follows, to-wit:

Lot 10, Block 2, Arlington Hills Addition to St. Paul, Ramsey County, Minnesota.

3. That she has reviewed the account records relating to the Turner mortgage loan, account no. 0307154450.
4. That as of August 31, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$140,011.11
Interest through August 31, 2004	4,913.73
Attorney's Fees:	700.00
Late Charges:	183.12
Non-Escrow Advances:	907.45
Escrow Balance:	997.20
<b>TOTAL:</b>	<b>\$147,712.61</b>

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of May, 2004 through August, 2004 in the amount of \$1,144.56 each.

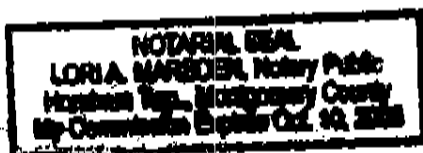
6. This affidavit is given in support of the motion of GMAC Mortgage Corporation for relief from the automatic stay.

GMAC MORTGAGE CORPORATION

By Felicia Roby  
Its Bankruptcy Specialist

Subscribed and sworn to before me  
this 31 day of August, 2004.

Joanna Marshall  
Notary Public



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Andrea Laverne Turner  
SSN XXX-XX-1160

**CHAPTER 13 CASE**

**CASE NO. 03-30345 GFK**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 3, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Felicia Roby, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Andrea L. Turner  
742 Magnolia Ave E  
St. Paul, MN 55106

Jasmine Z. Keller  
12 S 6<sup>th</sup> St Ste 310  
Minneapolis, MN 55402

Craig W. Andresen  
4445 W 77<sup>th</sup> St Ste 203  
Edina, MN 55435

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 3rd day of September, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Andrea Laverne Turner  
SSN XXX-XX-1160

**CHAPTER 13 CASE**

**CASE NO. 03-30345 GFK**

Debtor.

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**ORDER**

The above entitled matter came on for hearing upon motion of GMAC Mortgage Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 20, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated February 28, 2001, executed by Andrea L. Turner, a single person, recorded on April 30, 2001, as Document No. 3387628 covering real estate located in Ramsey County, Minnesota, legally described as follows, to-wit:

Lot 10, Block 2, Arlington Hills Addition to St. Paul, Ramsey County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure

4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Bankruptcy Court